

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
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)	
Amendments to Parts 1, 2 and 101 of the)	WT Docket No. 99-327
Commission's Rules to License Fixed)	
Services at 24 GHz)	
)	
)	

Comments of the Office of Advocacy, U.S. Small Business Administration

The Office of Advocacy of the United States Small Business Administration (“Advocacy”)¹ respectfully submits these Comments to the *Notice of Proposed Rulemaking* (“*NPRM*”) in the above-captioned proceeding.² The Federal Communications Commission (“Commission”) is proposing rules to govern the 24 GHz spectrum band, including plans to auction spectrum in this band according to Economic Area (“EA”). Advocacy suggests that the Commission use smaller geographic areas, such as Metropolitan Statistical Areas (“MSAs”) and Rural Service Areas (“RSAs”).

Advocacy recommends the use of MSAs and RSAs because these units may permit applicants to target just those areas they wish to serve, while EAs might be larger than the areas that many small businesses wish to serve. MSAs and RSAs cover specific urban or rural areas, rather than the wider economic regions covered by EAs, which include urban, suburban, and rural areas. Licensing by MSAs and RSAs would permit small businesses to compete for

¹ Congress established Advocacy in 1976 by Pub. L. No. 94-305 to represent the views and interests of small business within the Federal government. (Codified as amended at 15 U.S.C. §§ 634 a-g, 637.) Advocacy serves as a focal point for concerns regarding the government’s policies as they affect small business, develops proposals for changes in Federal agencies’ policies, and communicates these proposals to the agencies. (See 15 U.S.C. § 634c(1)-(4).) Advocacy also monitors agency compliance with the RFA and reports this to Congress.

² *Amendments to Parts 1, 2 and 101 of the Commission’s Rules to License Fixed Services at 24 GHz, Notice of Proposed Rulemaking*, WT Docket No. 99-327, FCC 99-333, released November 10, 1999.

geographic licenses that cover precisely the communities that they wish to serve.

Additionally, EA licensing may discourage small business participation in the 24 GHz auction. By organizing the licenses by EAs, which include both rural and urban areas, the Commission would permit the relatively high value of urban areas to influence bidding levels for relatively less valuable rural areas. Bidding levels might simply become too high for small businesses, despite the use of bidding credits. Inclusion of urban areas with rural areas may raise the auction value of an EA such that small businesses may not be able to afford to bid on the EA. Thus, from a cost standpoint, it may not be possible for small businesses to compete for whole EAs, particularly if their business plans only include a portion of the EA. But licensing smaller areas would tend to increase participation by small and rural businesses, including businesses owned by women and minorities.

The Commission concludes that using EAs would “result in economic opportunity” for small businesses.³ The Commission anticipates that this opportunity would come through post-auction partitioning of EAs into smaller territories:

We thus tentatively conclude that partitioning and spectrum disaggregation will provide a means to overcome entry barriers through the creation of licenses for smaller geographic areas that require less capital, thereby facilitating greater participation by, and economic opportunity for, smaller entities such as small businesses, rural telephone companies, and businesses owned by minorities and women, as required by Section 309(j)(4)(C) of the Communications Act.⁴

But by relying on post-auction partitioning to “overcome entry barriers” and lower capital costs for small business, the Commission would miss an opportunity to encourage small business participation in the auction itself. In its discussion of the benefits of partitioning, the Commission itself implies that EAs may be too large or too costly for small and minority

³ See *NPRM*, para. 17.

⁴ See *NPRM*, para. 26.

businesses to bid on or serve. Thus, small businesses may be forced, from a practical point of view, to wait until the spectrum has been auctioned and then try to pick off rural areas from EAs. But once an EA has been licensed, a small business seeking to acquire a rural portion through partition may have to pay considerably more than if the rural area were auctioned as a discreet license area.

Small businesses will have a greater opportunity to obtain licenses for the areas they wish to serve if they can compete for these licenses at the auction stage. Small businesses may well find it economically preclusive to attempt to compete at auction (with presumably higher dollar amounts) for EAs that they are not prepared to serve. With EAs, a small business would face the prospect of bidding on a larger area than it wants to serve, at a price that might be elevated by the presence in the EA of a more profitable urban area. But the Commission could encourage small business auction participation, and therefore small business provision of 24 GHz services, by offering the licenses on a smaller geographic basis. With smaller areas, a small business interested in serving one rural locale could bid only on the RSA containing that area. Similarly, with smaller areas, any business, small or large, interested in serving a particular town or city, could bid on that city without also taking neighboring rural areas it might not want. This would reduce the need for partitioning, along with any attendant extra costs, extra procedural steps, and extra Commission involvement.

Also, licensing smaller areas might reduce spectrum warehousing and speed service to rural areas in particular. Quite possibly, an EA licensee might not be interested in partitioning a portion of its license area but also might not be interested in serving all areas of the EA, only those areas it deems profitable. As a result, large areas of an EA could remain unserved for an extended period of time, perhaps indefinitely. But if such an “unserved” area had been offered

as a discreet RSA, an entity wishing to serve that area would have entered the market at the auction stage. And the value of that RSA license would have been measured by bidding competition, not by post-auction contract negotiation with another licensee/competitor.

Conclusion

The Commission's EA proposal risks excluding small businesses from the 24 GHz auction, and from the provision of 24 GHz services. The Commission should adopt smaller geographic areas, such as MSAs and RSAs. This would permit applicants to bid on just those areas they wish to serve. It also would reduce spectrum warehousing. Most importantly, it would encourage small business participation in the 24 GHz spectrum auction and, ultimately, would increase the diversity and number of service providers.

Respectfully submitted,

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